

AUDREY STRAUSS

Acting United States Attorney for the
Southern District of New York

By: BRANDON H. COWART

Assistant United States Attorney

86 Chambers Street, 3rd Floor

New York, New York 10007

Telephone: (212) 637-2693

Facsimile: (212) 637-2686

E-mail: brandon.cowart@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRITTANY HOGENCAMP,

Plaintiff,

-against-

GERALDINE JEAN, D.O. and HUDSON
RIVER HEALTH CARE, INC.,

Defendants.

NOTICE OF REMOVAL

from the Supreme Court of the
State of New York, County of Dutchess,
Index No. 54323/2019

Defendants Hudson River Healthcare, Inc. (the “Health Center”) and one of its employees, Geraldine Jean (“Jean”) (together, the “Federal Defendants”), by Audrey Strauss, Acting United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows.

1. The Federal Defendants are named as defendants in an action filed in the Supreme Court of the State of New York, County of Dutchess, Index No. 54323-2019. A copy of the Complaint is attached hereto as Exhibit A.

2. This action arises from medical care Jean provided to Plaintiff in January 2019. *See Exs. A, B.* Specifically, Plaintiff alleges that during the labor and delivery of her baby, Jean

failed to recognize, diagnose, and make timely and proper repair of a vaginal laceration, and thereafter failed to monitor and prevent a breakdown of that repair. *See* Ex. A ¶¶ 6-8; Ex. B. As a result of this alleged negligence, Plaintiff claims to have suffered significant, permanent injuries, specifically introitus and permanent, chronic incontinence. *See* Ex. A ¶ 9; Ex. B. Plaintiff further alleges that had she been fully informed of the risks and benefits of the above treatment, and alternative treatments, she would not have undergone the treatment at issue. *See* Ex. A ¶¶ 11-15. Plaintiff asserts causes of action for medical malpractice and lack of informed consent, and seeks damages that exceed the jurisdictional limits of all lower courts. *See* Ex. A ¶¶ 10, 16.

3. Pursuant to the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1992 and 1995, 42 U.S.C. § 201 *et seq.*, during the relevant period, the Federal Defendants were deemed to be employees of the United States Public Health Service for purposes of civil actions seeking damages for personal injury resulting from the performance of medical, surgical, dental, or related functions. *See* 42 U.S.C. § 233(a), (g)-(h); Ex. C, Certification of Audrey Strauss, Acting United States Attorney for the Southern District of New York, dated October 7, (the “Strauss Certification”).

4. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), and 2671-2680, provides the exclusive remedy with respect to Plaintiff’s claims against the Federal Defendants. *See* 42 U.S.C. § 233(a).

5. This action may be removed to this Court pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against employees of the United States Public Health Service acting within the scope of their employment. As set forth in the Strauss Certification, the Federal Defendants were

employees of the United States and were acting within the scope of their employment for purposes of Plaintiff's claims against the Federal Defendants.

6. All other defendants who have been properly served are not required to consent to the removal of this case to federal court because the Federal Defendants have a statutory right to remove under 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2).

7. The Federal Defendants will promptly file a copy of this Notice of Removal with the Clerk of Court, Supreme Court of the State of New York, County of Dutchess.

8. The submission of this Notice of Removal is solely for the special purpose of removing this action to the appropriate federal court and is not a general appearance by the Federal Defendants. This Office makes a limited appearance on behalf of the Federal Defendants solely for the purpose of removal of this action. This submission does not constitute a waiver of any defense available to the Federal Defendants, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
October 13, 2020

AUDREY STRAUSS
Acting United States Attorney for the
Southern District of New York
*Attorney for the United States of
America*

By: /s/ Brandon Cowart
BRANDON H. COWART
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2693
Facsimile: (212) 637-2686
E-mail: brandon.cowart@usdoj.gov